

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION  
DOCKET NO. 05-11682

L & T YACHT SALES, INC.	)
PLAINTIFF,	)
	)
VS.	)
	)
POST MARINE, INC.	)
DEFENDANT	)
	)

**PLAINTIFF, L & T YACHT SALES RESPONSE AND OPPOSITION**  
**TO DEFENDANT POST MARINE CO., INC.'S STATEMENT**  
**OF MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1**

**(ORAL ARGUMENT REQUESTED)**

The Plaintiff, L & T Yacht Sales, Inc. hereby responds to each of the purported material facts that the Defendant, Post Marine Co., Inc. ("Post") alleges are not in dispute as follows, and requests that the court consider the additional material facts contained herein in support of Plaintiff's Opposition to Post's Motion for Summary Judgment:

1. Plaintiff agrees that this fact is not in dispute.
2. Plaintiff agrees that this fact is not in dispute.
3. Plaintiff agrees that this fact is not in dispute.
4. Plaintiff agrees that this fact is not in dispute.

5. Plaintiff agrees that this fact is not in dispute, but submits that this fact is not dispositive of the warranty issue in this case, as further detailed herein and in its Brief in Opposition to the Plaintiff's Motion for Summary Judgment.

6. Plaintiff agrees that this fact is not in dispute, but submits that this fact is not dispositive of the warranty issue in this case, as further detailed in its Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment. Plaintiff further states that Post has attempted to repair the defective gel coat on numerous boats. See Post's Answers to Interrogatories No. 20-22 in *Viking Yacht, et al v. Composite One, LLC, et al*, New Jersey District Court, Docket No.05-538, attached hereto as Exhibit A. Notwithstanding the alleged exclusion under its warranty, Post has sued the manufacturer of the gel coat. A copy of Post's Amended Complaint filed in its litigation against the gel coat manufacturer is attached hereto as Exhibit B. Post is seeking damages for its actual or anticipated cost to repair each of the boats that it manufactured using the defective gel coat. *See*, Deposition of Kenneth Jensen, p. 85, ln. 10-19; p. 88, ln. 13-17 attached hereto as Exhibit C.

7. Plaintiff agrees that this fact is not in dispute, but states that this fact is not dispositive of the warranty issue in this case, as further detailed in its Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment. Plaintiff further states that Post has attempted to repair the defective gel coat on numerous boats more than one year after their date of sale. See Post's Answers to Interrogatories No. 20-22 in *Viking Yacht, et al v. Composite One, LLC, et al*, New Jersey District Court, Docket No.05-538, attached hereto as Exhibit A. Notwithstanding the alleged expiration of its warranty, Post has sued the manufacturer of the gel coat for

damages. A copy of Posts Amended Complaint filed in its litigation against the gel coat manufacturer is attached hereto as Exhibit B. Post is seeking damages for the actual or anticipated cost to repair each of the boats that it manufactured using the defective gel coat. *See*, Deposition of Kenneth Jensen, p. 85, ln. 10-19; p. 88, ln. 13-17 attached hereto as Exhibit C.

8. Plaintiff agrees that this fact is not in dispute, but states that this fact is not dispositive of the warranty issue in this case, as further detailed in its Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment. Plaintiff further states that Post has attempted to repair the defective gel coat on numerous second owner boats. *See* Post's Answers to Interrogatories No. 20-22 in *Viking Yacht, et al v. Composite One, LLC, et al*, New Jersey District Court, Docket No.05-538, attached hereto as Exhibit A. Notwithstanding the alleged non-application of its warranty to second owners, Post has sued the manufacturer of the gel coat for damages. A copy of Posts Amended Complaint filed in its litigation against the gel coat manufacturer is attached hereto as Exhibit B. Post is seeking damages for the actual or anticipated cost to repair each of the boats that it manufactured using the defective gel coat. *See*, Deposition of Kenneth Jensen, p. 85, ln. 10-19; p. 88, ln. 13-17 attached hereto as Exhibit C.

9. Plaintiff agrees that this fact is not in dispute, but states that this fact is not dispositive of the warranty issue in this case, as further detailed in its Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment. Plaintiff further states that Post has attempted to repair the defective gel coat on numerous boats more than one year after their date of sale. *See* Post's Answers to Interrogatories No. 20-22 in *Viking Yacht, et al v. Composite One, LLC, et al*, New Jersey District Court, Docket No.05-538, attached hereto as Exhibit A. Notwithstanding



the alleged expiration of its warranty, Post has sued the manufacturer of the gel coat for damages. A copy of Posts Amended Complaint filed in its litigation against the gel coat manufacturer is attached hereto as Exhibit B. Post is seeking damages for the actual or anticipated cost to repair each of the boats that it manufactured using the defective gel coat. *See*, Deposition of Kenneth Jensen, p. 85, ln. 10-19; p. 88, ln. 13-17 attached hereto as Exhibit C.

10. Plaintiff agrees that this fact is not in dispute

11. Plaintiff agrees that this fact is not in dispute. However, the Plaintiff adds that Post was aware of the defects with the gel coat used on boats manufactured by Post between 1997 and 2002 by the summer / fall of 2002. *See*, Deposition of Kenneth Jensen, p. 22. ln. 1-p. 23. ln. 14; p. 23, ln. 15-18; p. 24. ln. 12-15, attached hereto as Exhibit C.

12. Plaintiff agrees that this fact is not in dispute.

13. Plaintiff states that the letter speaks for itself. The Plaintiff adds that this letter was precipitated by the threat of the Plaintiff's president to sue Post due to the defective gel coat. *See*, Deposition of Kenneth Jensen, p. 81, ln. 5-8, attached hereto as Exhibit C. Todd Hamilton, President of L & T Yacht Sales had instructed his attorney to file suit if Post did not agree to perform repairs. *See* Affidavit of Todd Hamilton attached hereto as Exhibit D.

14. Plaintiff agrees that this fact is not in dispute.



15. Plaintiff states that the letter speaks for itself. The Plaintiff adds that contrary to what the letter states would happen, the gel coat was not removed from entire surfaces. *See*, Deposition of Joseph Martorana, p. 19, ln. 11-15; (the sides of the hull) p. 19, ln. 16-18; (the bridge) p. 20, ln. 3-7; (the interior of the bridge) p. 20, ln. 7-8; (the hardtop) p. 20, ln. 12-13; (the bottom of the boat) p. 21, ln. 14 - pg. 22, ln. 16, attached hereto as Exhibit E and *see*, Deposition of Cortez Marks, p. 19, ln. 14-16; (the back bulkhead) p. 20, ln. 7-8; (the dashboard) p. 20, ln. 22-23; (the hardtop) p. 20, ln. 24-25; (the bottom of the boat) p. 19, ln. 20-23, attached hereto as Exhibit F.

16. Plaintiff agrees that this fact is not in dispute, thus a time frame *was* established. Plaintiff adds that Post failed to complete the repairs within this time frame. *See*, Deposition of Todd Hamilton, p. 26, ln. 4-21 attached hereto as Exhibit G. *See*, Affidavit of Todd Hamilton attached hereto as Exhibit D.

17. Denied. Mr. Hamilton's deposition transcript states that these were the only agreements in writing. *See*, Deposition of Todd Hamilton, p. 27, ln. 10-21, attached hereto as Exhibit D.

18. The Plaintiff states that this issue is in dispute. The Plaintiff states that its forbearance from filing suit at the time and allowing Post to attempt repairs was consideration relative to the agreement for the boat repairs. *See*, Deposition of Kenneth Jensen, p. 81, ln. 5-8, attached hereto as Exhibit C. *See*, Affidavit of Todd Hamilton attached hereto as Exhibit D.

19. Plaintiff agrees that this fact is not in dispute.

20. Plaintiff agrees that this fact is not in dispute.

21. Plaintiff agrees that this fact is not in dispute.

22. Plaintiff states that the letter speaks for itself. However, Plaintiff adds that it disputes that items identified therein are “relatively minor repairs.” Further, Plaintiff states that when Hamilton went to review the boat, Post had one side of it covered, which could not be removed. Thus, the letter only outlined the items that Hamilton could see at that time. See, Deposition of Todd Hamilton, p. 39, ln. 15 – 19; p. 45, ln. 4 – 12, attached hereto as Exhibit G.

23. Plaintiff agrees that this fact is not in dispute.

24. Plaintiff agrees that up to that point, Post had spent over 2,200 hours repairing. Plaintiff disputes that the repairs were in accordance with the terms of its August 25, 2004 letter and the clarifying letter of September 2, 2004 as Post did not remove the gel coat from entire surfaces. See, Deposition of Joseph Martorana, p. 19, ln. 11-15; (the sides of the hull) p. 19, ln. 16-18; (the bridge) p. 20, ln 3-7; (the interior of the bridge) p. 20, ln 7-8; (the hardtop) p. 20, ln 12-13; (the bottom of the boat) p. 21, ln. 14 - pg. 22, ln. 16, attached hereto as Exhibit E and see, Deposition of Cortez Marks, p. 19, ln. 14-16; (the back bulkhead) p. 20, ln. 7-8; (the dashboard) p. 20, ln. 22-23; (the hardtop) p. 20, ln. 24-25; (the bottom of the boat) p. 19, ln. 20-23, attached hereto as Exhibit F.

25. The Plaintiff disputes this fact. The 953 series gel coat is defective. *See*, Deposition of Kenneth Jensen, p. 78, ln. 7-8 attached hereto as Exhibit C. Post used more of the 953 gel coat to perform repairs to Plaintiff's boat. *See*, Deposition of Joseph Martorana, p. 26, ln. 9-16, attached hereto as Exhibit E. The 953 gel coat sprayed on by Post to perform repairs on Plaintiff's boat has re-cracked. *See*, Deposition of Todd Hamilton, p. 33, ln. 7-10, p. 59, ln. 14-20 attached hereto as Exhibit G

26. Plaintiff agrees that this fact is not in dispute.

27. Plaintiff agrees that this fact is not in dispute.

28. Plaintiff states that the documents speak for themselves. Plaintiff disputes that the letters are non-responsive. The diminished amount (\$125,000.00 - \$150,000.00) that a buyer would pay for the boat, due to the issues with the cracked gel coat is one measure of the Plaintiff's damages.

29. Plaintiff agrees that this fact is not in dispute.

The Plaintiff,  
By its Attorneys,

/s/ John E. Zajac

John E. Zajac, Esquire BBO # 560195  
**CARMICHAEL, ZAJAC & FLEURY, P.C.**  
170 High Street  
Taunton, MA 02780  
(508) 821-2552



**CERTIFICATE OF SERVICE**

I, John E. Zajac, Esquire this 13th day of July, 2007 have given notice of the within Plaintiff, L & T Yacht Sales Response And Opposition To Statement Of Material Facts Pursuant To Local Rule 56.1 In Support Of Defendant Post Marine Co., Inc.'s Motion For Summary Judgment, by e-mail service, via the Court's CM/ECF system which sent notification of such filing to Howard M. Brown, Esquire, Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th floor, Boston, MA 02110 and by regular mail, postage pre-paid to Michel O. Weisz, Esquire at his 9350 S. Dixie Highway, Miami, FL 33156.

/s/ John E. Zajac

John E. Zajac, Esq.

# **EXHIBIT**

# **A**

DEC 12 2006

**MICHEL O. WEISZ, P.A.**  
9350 South Dixie Highway  
Suite 1500  
Miami, Florida 33156  
Telephone: (305) 670-3820  
Attorneys for Plaintiffs Viking Yacht  
Company and Post Marine Co., Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

VIKING YACHT COMPANY, a New Jersey	:	
Corporation and POST MARINE CO., INC., a	:	
New Jersey Corporation,	:	
	:	CIVIL ACTION NO. 05-538
Plaintiffs,	:	(JEI/JS)
v.	:	
	:	
COMPOSITES ONE LLC, a Foreign Limited	:	
Liability Co., and COOK COMPOSITES AND	:	
POLYMERS, a Missouri Corporation,	:	
	:	
Defendants.	:	
	:	

**POST MARINE CO., INC.'S SUPPLEMENTAL ANSWERS TO  
FIRST SET OF INTERROGATORIES OF COMPOSITES ONE LLC**

Post Marine Co., Inc. hereby supplements its answers to Composites One LLC's First Set of Interrogatories as follows:

20. Identify and describe with particularity each and every customer complaint you have received regarding the 953 Series Gel Coat, including, but not limited to, a description with particularity of the complaint, when the complaint was made, who made the complaint, to whom the complaint was made, how the complaint was addressed by Post and/or any other third party, and the outcome of the complaint.



**ANSWER:**

Hull	First Complaint	Second Complaint	Initially Reported Via.	Reported By	Complaint	Action
42-311	Fall 2005		Phone	Fabricant, Robert MD/ Integrity Marine	Cracks in gel coat	No action to date
42-316	Fall 2003		Phone	Falco, Tom Portland Boat Works	Cracks in gel coat	Boat Repaired at Post Marine 2003/04
42-316		Fall 2005	Phone	StJohn, David	Cracks in gel coat	No action to date
42-317			Phone	Isyk, Ron	Cracks in gel coat	Boat repaired at Post Marine 2004
42-319	Summer 2004		Phone	Hildebrandt, Brad	Cracks in gel coat	Boat repaired at Post Marine 2004
42-324		Dec 2005	Phone	Gatto, Anthony M.	Cracks in gel coat	Boat repaired at Post Marine 2004
42-326	Summer 2003		Phone	Loper, Dr. Mark R.	Cracks in gel coat	Boat repaired at Post Marine 2004
42-328	Spring 2005		Phone	Farrar, Gary	Cracks in gel coat	No action to date
47-009			Phone	Lippman, Richard	Cracks in gel coat	No action to date
47-011	Summer 2005		Phone	Burel, Marc & Kathy	Cracks in gel coat	Currently at Post Marine Awaiting Repairs
50-052	Spring 2002		Phone	Czipiel, Bob	Cracks in gel coat	Boat repaired

						at Post Marine 2002
50-052		Spring 2004	Phone	Keegan, John III	Cracks in gel coat	Currently at Post Marine Awaiting Repairs
50-053			Phone	Sadow, Alfred	Cracks in gel coat	No action to date
50-055	Nov/Dec 2005		Phone	Palmer, Cary	Cracks in gel coat	No action to date
50-057	Jan 2004		Phone	Hagar, John & Rita	Cracks in gel coat	Boat repaired at Post Marine Spring 2006
50-058	Spring 2004		Phone	Thompson, Andy	Cracks in gel coat	Currently at Post Marine Being Repaired
50-060	May 2004		Phone	Mouriz, Lazaro J.	Cracks in gel coat	No action to date
50-061	Spring 2002		Phone	Silverberg, Michael & Gale	Cracks in gel coat	Boat repaired at Post Marine 2002
50-061		Spring 2004	Phone	Silverberg, Michael & Gale	Cracks in gel coat	Boat repaired at Post Marine 2005
50-062	Spring 2005		Phone	Loy, Peter M.	Cracks in gel coat	No action to date
50-064	March 2006		Phone	Integrity Marine	Cracks in gel coat	Currently being repaired at Portland Boat Works
50-066			Phone	Christy, Frank	Cracks in gel coat	Currently at Post Marine

						Awaiting Repairs
50-067	Winter 2005/06		Phone	Taymore, Bruce	Cracks in gel coat	No action to date
50-072	Dec 2005		Phone	Miller, William N.	Cracks in gel coat	No action to date
50-076	May 2004		Phone	Hamilton, Todd	Cracks in gel coat	Boat Repaired at Post Marine
50-079	Fall 2003		Phone	Mabardy, Chuck	Cracks in gel coat	Boat Repaired at Post Marine 2004
50-079		Fall 2006	Phone	Mabardy, Chuck	Cracks in gel coat	Currently being repaired at Onset Bay Marine
50-080	Summer 2004		Phone	Gross, Randall A.	Cracks in gel coat	Boat Repaired at Post Marine 2004
50-082			Phone	Fernandes, Mario	Cracks in gel coat	Boat Repaired 2003
50-084	April 2005		Phone	Rau, William F.	Cracks in gel coat	Boat Repaired 2005
50-085	Sep 2006		Phone	Wright, Doug	Cracks in gel coat	No action to date
50-086			Phone	Palidori, Bob	Cracks in gel coat	Boat Repaired at Post Marine
50-087	Fall 2005		Phone	Otis, Tom	Cracks in gel coat	No action to date
50-088	Summer 2004		Phone	Khan, Sal	Cracks in gel coat	No action to date
50-089	Jan 2006		Phone	Brown, Peter & Ellen	Cracks in gel coat	No action to date
50-090			Phone	Idzik, Ed	Cracks in	Boat



					gel coat	Repaired at Post Marine
56-003	Fall 2005		Phone	Buziak, Anthony	Cracks in gel coat	No action to date
56-005	Spring 2006		Phone	Touchstone, Jim	Cracks in gel coat	No action to date

21. Identify all damages you are claiming in connection with the claims asserted in the First Amended Complaint, including, but not limited to, (i) an itemization and breakdown by individual boat of the \$1,444,873.79 in damages you assert in your Rule 26(a) disclosures, (ii) all out-of-pocket expenses, any, and (iii) all documents that relate in any way to your damage claims.

**ANSWER:**

December 6, 2006

Hull #	Labor Hrs.	Labor Hrs. X 65	Material (.078)	Total
*42-328	Est. 1300	84,500.00	7,838.00	91,091.00
42-326	1138.50	74,002.50	5,772.20	79,774.70
	Transportation to and from the	Great Lakes	For 42-326	8,726.80
**42-324	1100	71,500.00	5,577.00	77,077.00
42-319	1382.75	89,878.75	7,010.54	96,889.29
42-317	1079	70,135.00	5,470.53	75,605.53
**42-316	882.00	57,330.00	4,471.74	61,801.74
*42-311	Est. 1400	84,500.00	7,838.00	91,091.00
*47-011	Est. 1400	91,000.00	7,098.00	98,098.00
*47-009	Est. 1400	91,000.00	7,098.00	98,098.00
50-090	Est. 1673	108,745.00	8,482.11	117,227.11
*50-089		To Pay Integrity Marine		60,000.00
*50-088	Est. 1673	108,745.00	8,482.11	117,227.11
*50-087	Est. 1673	108,745.00	8,482.11	117,227.11
50-086	1293.25	84,061.25	6,556.78	90,618.03
50-085	Est. 1673	108,745.00	8,482.11	117,227.11
50-084	1761.75	114,513.75	8,932.07	123,445.82
50-082	180	11,700.00	912.60	12,612.60
50-080	1299.25	84,451.25	6,587.20	91,038.45
50-079	1284	\$83,460.00	\$6,509.88	\$89,969.88
50-079		To Pay Onset Bay Marine	(second repair)	46,000.00

50-076	2090.75	135,898.75	10,600.10	146,498.85
*50-072	Est. 1673	108,745.00	8482.11	117,227.11
*50-067	Est. 1673	108,745.00	8,482.11	117,227.11
50-066	285.75	18,573.75	1,448.75	20,022.50
50-066	Est. 1673	108,745.00	8482.11	117,227.11
50-064		Paid Portland Boat Works		60,000.00
*50-062	Est. 1673	108,745.00	8482.11	117,227.11
50-061	1546	100,490.00	7,838.22	108,328.22
**50-061	230	14,950.00	1,166.10	16,116.10
50-060		Paid LUU Marine		47,700.00
Travel to 50-060	15.75	1023.75	Plane fare 270.40	1,294.15
50-058	Est. 2300	149,500.00	11,661.00	161,161.00
50-057	3346	217,490.00	16,964.22	234,454.22
*50-055	Est. 1673	108,745.00	8482.11	117,227.11
*50-053	Est. 1673	108,745.00	8,482.11	117,227.11
**50-052	235	15,275.00	1,191.45	16,466.45
*,** 50-052	Est. 1673	108,745.00	8,482.11	117,227.11
56-005	Est. 2300	149,500	11,661.00	161,161.00
*56-003	Est. 2300	149,500	11,661.00	161,161.00
TOTAL				\$3,715,799.54

\*These boats have been reported to be cracking – no inspection has been made to date

\*\* These boats were repaired with CCP 953 gel coat and additional cracking has occurred  
Please note that while an inspection can be made and an estimate developed, our experience has been that when the boat can be scheduled and brought in for repair, the damage is more extensive

22. Identify each and every boat you allege has been damaged as a result of the 953 Series Gel Coat, including, but not limited to, the model, year and series of boat, the geographic location of storage for the boat for each year since its manufacture, the length of time it was stored for each year since its manufacture, a description with particularity of the alleged damage, and the name, address and telephone number of the current and any prior owners of each boat.

**ANSWER:**

Hull #	Model	Year	Storage History	Damage
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42-328	42	2001	01 – 03 FL 03 – 04 MA 04 – 05 FL	Gel Coat Cracks
42-326	42	2001	00 – 01 Great Lakes 01 – 02 Great Lakes 02 – 03 Great Lakes 03 – 04 N.J. 04 – 05 Great Lakes	Gel Coat Cracks
42-324	42	2000	New Jersey all year	Gel Coat Cracks
42-319	42	2000	New Jersey all year	Gel Coat Cracks
42-317	42	1999	Winter 99 – 00 OH 01 – 05 N.C.	Gel Coat Cracks
42-316	42	1999	Connecticut all year	Gel Coat Cracks
42-311	42	2001	New Jersey all year	Gel Coat Cracks
50-090	50		New Jersey all year	Gel Coat Cracks
50-089	50	2003	02 – 05 N.J. 05 – 06 MA	Gel Coat Cracks
50-088	50	2004	Connecticut all year	Gel Coat Cracks
50-087	50	2002	Connecticut and Long Island	Gel Coat Cracks
50-086	50	2002	Connecticut all year	Gel Coat Cracks
50-085	50	2002	Winter 02 – 03 FL 03 – 04 FL 04 – 05 FL 05 – 06 CT	Gel Coat Cracks
50-084	50	2002	02 – 03 N.C. 03 – 04 N.C. 04 – 05 MD.	Gel Coat Cracks
50-082	50		Maryland Rhode Island	Gel Coat Cracks
50-080	50	2001	Maryland all year	Gel Coat Cracks
50-079	50	2001	Massachusetts all year	Gel Coat Cracks
50-076	50	2001	01 – 03 CT 03 – 04 MA 04 – 05 NJ	Gel Coat Cracks
50-072	50	2000	01 – 03 MA	Gel Coat Cracks
50-067	50	2000	Massachusetts all year	Gel Coat Cracks
50-066	50	2000	00 – 04 NY 04 – 05 FL	Gel Coat Cracks
50-062	50	2000	Maryland and N.C.	Gel Coat Cracks
50-061	50	2000	Connecticut All Year	Gel Coat Cracks
50-060	50	2000	Winter 99 – 00 FL 00 – 01 CT 01 – 02 CT 02 – 03 FL 03 – 04 FL 04 – 05 FL	Gel Coat Cracks



50-058	50	1999	Maryland	Gel Coat Cracks
50-057	50	1999	Massachusetts all year	Gel Coat Cracks
50-055	50	1999	Connecticut sold to Florida	Gel Coat Cracks
50-053	50	1999	Connecticut all year	Gel Coat Cracks
50-052	50	1998	Winter 98 - 99 CT 99 - 00 CT 00 - 01 FL 01 - 02 CT 02 - 03 FL 03 - 04 CT 04 - 05 CT	Gel Coat Cracks
47-011	47	1999	New Jersey all year	Gel Coat Cracks
47-009	47	2000	New Jersey all year	Gel Coat Cracks
56-005	56	2002	Winter 02 - 03 FL 03 - 04 FL 04 - 05 FL 05 - 06 SC	Gel Coat Cracks
56-003	56	2002	01 - 04 FL 04 - 06 MD	Gel Coat Cracks

23. Describe with particularity all repairs made to boats by Post in connection with damages allegedly related to the 953 Series Gel Coat.

**ANSWER:**

- 42-316      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied.
- 42-317      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied.
- 42-319      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied.
- 42-324      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied. Extensive re-cracking has been reported.
- 42-326      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied.
- 50-052      Effected areas were sanded down and CCP953 WA411 gel coat was re-applied. Extensive re-cracking occurred. Boat has returned to Post Marine for more extensive repairs.
- 50-057      Effected areas were sanded down and Interplastic gel coat was applied.

- 50-061      Effected areas were sanded down and **CCP953 WA411** gel coat was re-applied. Extensive re-cracking occurred. Effected areas were sanded down and **Interplastic** gel coat was applied
- 50-076      Effected areas were sanded down and **Interplastic** gel coat was applied.
- 50-079      Effected areas were sanded down and **CCP953 WA411** gel coat was re-applied. Extensive re-cracking occurred. Scheduled for repairs at Onset Bay Marina, Buzzards Bay, Massachusetts.
- 50-080      Effected areas were sanded down and **CCP953 WA411** gel coat was re-applied.
- 50-084      Effected areas were sanded down and **Interplastic** gel coat was applied.
- 50-086      Effected areas were sanded down and **CCP953 WA411** gel coat was re-applied.

Other boats have not had repairs completed as of this date.

Post has produced records of all CCP gel coat purchased subsequent to 2002 which was used to repair boats. Post does not have exact batch records used for repairs.

VERIFICATION

I verify that the foregoing statements made by me are true. I further certify that the exhibits to these interrogatories are true and complete copies of originals. Pursuant to 28 U.S.C.

' 1746, I understand I make this Verification under penalty of perjury.

  
Signature

Kenneth S. Jensen  
Print Name

President  
Title

12/9/06  
Date

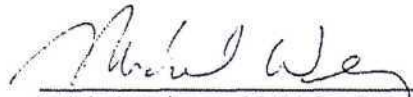
**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

VIKING YACHT COMPANY, a New Jersey Corporation and POST MARINE CO., INC., a New Jersey Corporation,	:	
	:	
	:	
	:	CIVIL ACTION NO. 05-538
Plaintiffs,	:	(JEI/JBR)
v.	:	
	:	
COMPOSITES ONE LLC, a Foreign Limited Liability Co., and COOK COMPOSITES AND POLYMERS, a Missouri Corporation,	:	
	:	
	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2006, I caused a copy of the foregoing Post Marine Co., Inc.'s Supplemental Answers to Composites One LLC's First Set of Interrogatories to be served on counsel of record via Federal Express as follows:

Steven E. Bizar, Esquire  
Meredith Myers LeConey, Esquire  
BUCHANAN INTERSOLL PC  
1835 Market Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19103

  
Michel Ociacovski Weisz (Fla. Bar No. 336939)



# **EXHIBIT**

**C**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 BOSTON DIVISION  
4 C.A. NO. 05-11682 MLW  
5

6 L & T YACHT SALES, INC., :  
7 Plaintiff, :  
8 -vs- :  
9 POST MARINE CO., INC., :  
10 Defendant. :  
11 -----  
12  
13

14 DEPOSITION OF: KENNETH JENSEN  
15 WEDNESDAY, APRIL 11, 2007  
16  
17  
18  
19

20 Atlantic City Court Reporting, LLC.  
21 Certified Shorthand Reporters & Videographers  
22 1125 Atlantic Avenue - Suite 416  
23 Atlantic City, New Jersey 08401  
24 (609) 345-8448  
25 www.accourtreporting.com

1 K E N N E T H J E N S E N,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ZAJAC:

5 Q. Good morning, Mr. Jensen.

6 A. Good morning.

7 Q. My name is John Zajac, and as I'm sure  
8 you know, I represent L & T Yacht Sales, Incorporated,  
9 the plaintiff, in an action in the Massachusetts  
10 Federal District Court against Post Marine Company.

11 We are here today to take your  
12 deposition, and I believe you have been deposed  
13 before.

14 A. Yes, I have.

15 Q. So I'm going to briefly go over the  
16 rules with you, but I assume that having been through  
17 this process before, you're pretty familiar with what  
18 they are. We're here to take your deposition, which  
19 is that I'm going to ask you questions and you're  
20 going to answer them.

21 If you need to take a break for any  
22 reason, we can certainly do that. I would simply ask  
23 that if there is a question before you, that you  
24 answer that question before we take any type of break.

25 If you don't understand my question,

## (JENSEN - ZAJAC)

1 Q. Mr. Jensen, has Post had problems with  
2 the gel coating on boats in the past 10 years?

3 A. With one particular series, yes.

4 Q. When you say "series," what do you mean?

5 A. One series of gel coat.

6 Q. And is there a designation assigned to  
7 that series of gel coat?

8 A. Yes.

9 Q. It's -- what is that designation?

10 A. It's CCP's 953 series.

11 Q. Who is CCP?

12 A. \* cook, Composite and Polymers.

13 Q. When did Post begin using the 953 gel  
14 coat?

15 A. Fall of '97.

16 Q. Did it use that -- did it use 953 gel  
17 coat on all sizes of boats that it manufactured?

18 A. Yes.

19 Q. Did it use any other gel coat besides  
20 the 953 between 1997 and 2004?

21 A. Yes.

22 Q. What other gel coats has Post used  
23 besides the 953 gel coat since 1997?

24 A. Early in '97 we used the CCP 952 gel  
25 coat, and then late 2002 we started using the



1 Interplastic's gel coat.

2 Q. Did Post exclusively use the  
3 Interplastic's gel coat for all new boats manufactured  
4 after 2002?

5 A. Talking calendar year 2002, yes.

6 Q. So for boats that were manufactured as  
7 opposed to repaired, the 953 gel coat was only used  
8 between 1997 and 2002?

9 A. Yeah. Realize calendar year 2002 would  
10 encompass some 2003 model boats, yes.

11 Q. And is the 953 gel coat the only one in  
12 which Post has experienced significant problems with  
13 cracking?

14 A. Yes.

15 Q. When did Post first become aware of a  
16 problem with cracking with the 953 gel coat?

17 A. First time we saw it was in the summer  
18 of 2002.

19 Q. And how did you become aware of that  
20 problem?

21 A. A customer asked us if we would look at  
22 his boat, if we, you know -- take care of some cracks  
23 in it so he brought it down, and we took care of it.

24 Q. What was the hull number of that boat?

25 A. I believe it was 52.

1 Q. And what size?

2 A. 50-foot.

3 Q. When was that boat manufactured?

4 A. 1998.

5 Q. What type of problems did the owner of  
6 that boat encounter?

7 A. Just some unusual indiscriminate  
8 cracking.

9 Q. And in 2002, was the person who brought  
10 it to you the original owner of the boat?

11 A. Yes.

12 Q. When did Post become aware that this was  
13 not an isolated problem with Boat 50-52?

14 A. In the fall of 2002, we saw a second  
15 boat.

16 Q. What was the hull number of that boat?

17 A. Number 60. 50, Number 60.

18 Q. And did that boat have the same problems  
19 as 50-52?

20 A. Similar.

21 Q. When was 60 manufactured?

22 A. '98, '99. I'm not sure.

23 Q. In the time line of Post becoming aware  
24 of these problems, what happened next?

25 A. What do you mean?

## (JENSEN - ZAJAC)

1 Q. Well, as of the fall of 2002, Post has  
2 become aware of problems with two boats. When did  
3 Post become aware of more problems than that?

4 A. I'm going to say in '03. I don't have  
5 specifics.

6 Q. How did Post become aware of further  
7 problems with cracking of gel coat?

8 A. Typically, a customer would call us up  
9 seeing something unusual.

10 Q. So by 2003, how many such calls had Post  
11 received?

12 A. It really wasn't too many initially. I  
13 can't tell you exactly, but it wasn't -- it wasn't  
14 that many.

15 Q. What is the hull number of Mr.  
16 Hamilton's boat or L & T Yacht Sales' boat?

17 A. 50-076.

18 Q. And when was that boat manufactured?

19 A. I believe 2001. Excuse me. Let me  
20 backtrack on that, okay? Manufacturing is a lengthy  
21 time. The boat would have been started in 2000,  
22 completed -- it was completed, I believe, in January  
23 of '01.

24 Q. What's the normal time frame for the  
25 manufacture of a 50-foot Post boat?

1           A.       Approximately four months. Four,  
2 four-and-a-half months.

3           Q.       And the 953 gel coat would have been the  
4 type of gel coat used on Number 76?

5           A.       Yes.

6           Q.       Did someone contact you about a problem  
7 with cracking of the gel coat on Boat 76?

8           A.       Yes.

9           Q.       Who contacted you?

10          A.       Mr. Hamilton.

11          Q.       And did he speak with you directly about  
12 it?

13          A.       Yes.

14          Q.       When were you first contacted by Mr.  
15 Hamilton about that boat?

16          A.       I believe it was in May of '04.

17          Q.       How did he first contact you?

18          A.       Telephone.

19          Q.       And what did he say to you?

20          A.       Just said he was experiencing some  
21 unusual, odd cracking, and we told him what we had  
22 experienced.

23          Q.       What did you tell him?

24          A.       Just that we were seeing in some -- on  
25 some boats an unusual type of gel coat cracking.



1 Q. And is Post paying for that?

2 A. We're paying for part of it.

3 Q. Would those repairs require the removal  
4 of a substantial amount of gel coat?

5 A. It would require the remove of some gel  
6 coat. Yes.

7 Q. How much?

8 A. They need to -- let me backtrack just  
9 one second. At the time that Mr. Mobarri's boat was  
10 repaired, it was repair using 953 gel coat, okay? Mr.  
11 Hamilton's boat was not repaired with 953 gel coat.  
12 So the 953 gel coat on Mr. Mobarri's boat suffered a  
13 second failure, okay? The boat is being sanded -- you  
14 know, is to be sanded aggressively.

15 The people at Onset Bay felt they knew  
16 how far they had to take it down and then it was going  
17 to be Awl Grippped.

18 Q. And is it still at Onset Bay Marina for  
19 repairs?

20 A. I'm not sure.

21 Q. For a period of time did Post use the  
22 953 gel coat to perform repairs?

23 A. Yes.

24 Q. And during what period of time did Post  
25 use 953 gel coat to perform repairs?

1 A. Up until either late 2004 or early 2005.

2 Q. And what was the reason that Post  
3 initially used 953 gel coat to perform those repairs?

4 A. The -- we had the people from CCP come  
5 in and, you know, look at what was going on. They  
6 assured us their product was good. They assured us  
7 that, you know, how we were fixing the boats, that we  
8 wouldn't have further problems.

9 Q. When did those conversations take place?

10 A. They took place during '04, '02 when  
11 they came in. I'm not sure if we ever had them visit  
12 us during '03.

13 Q. And subsequently did the repairs using  
14 the 953 gel coat experience the same problems as?

15 A. Some did. Some haven't.

16 Q. Is that why Post no longer uses 953 gel  
17 coat for repairs?

18 A. Yes.

19 Q. Do you know if Bill Catauro also went to  
20 view Mr. Mobarri's boat?

21 A. He may have.

22 Q. For the second repairs done to Mr.  
23 Mobarri's boat, were they only to fix the first  
24 repairs or was there continued cracking in the other  
25 areas that had not been repaired?

1 Q. Did Post ever advise Mr. Hamilton in  
2 writing as to how the repairs to his boat would be  
3 done?

4 A. I believe we did.

5 Q. And do you know who prepared that?

6 A. I know that our attorney -- we prepared  
7 an in-house memo, went to our attorney. He forwarded  
8 a letter and then Joe Martorana sent a follow-up  
9 letter.

10 Q. Did Mr. Hamilton indicate that he was  
11 going to use that letter to show to any subsequent  
12 purchaser or purchasers?

13 A. Not that I recall.

14 Q. Did Mr. Hamilton express any concerns as  
15 to the type of repairs that Post stated in that  
16 letter?

17 A. Well, I know in the first letter he  
18 wanted a little clarification, and then Joe sent that  
19 second letter.

20 Q. If you recall, what were those  
21 clarifications?

22 A. I don't recall.

23 Q. At any time did Post ever offer a cash  
24 settlement, rather than repairs to Mr. Hamilton's  
25 boat?



1 A. Telephone.

2 Q. When did Post first begin notifying  
3 dealers with problems with the gel coat?

4 A. Well, some of them knew because some of  
5 them had their clients suffer that issue. The only  
6 people who weren't aware of it were the people in  
7 Florida, and, I don't know, a couple years.

8 Q. Is it a fair statement to characterize  
9 the cracking of the 953 gel coat on Post boats a major  
10 problem?

11 A. It's not a structural issue. It's not a  
12 major problem with the boat. It's a cosmetic issue,  
13 which is labor intensive to repair, and it's expensive  
14 to repair, but it is not a major problem in that it  
15 prohibits a customer from utilizing the boat and  
16 there's no safety issue involved in this problem.

17 Q. Has Post ever referred to the gel coat  
18 failure as being catastrophic?

19 A. Yes, in the context of the gel coat, not  
20 in the context of the boat.

21 Q. Does the gel coat failure diminish the  
22 value of a boat?

23 A. It makes it unsightly and that's in the  
24 eye of the beholder. We've had people buy boats that  
25 had this problem and it did not affect them buying the

1 Oyster Harbor as a dealer. We had gone a few years  
2 without a dealer and then later -- and then  
3 probably -- I'm ball parking this, probably around  
4 '97, we had Oyster Harbor as a dealer and they were a  
5 dealer with us until '04-'05, in that time frame.

6 BY MR. ZAJAC:

7 Q. Is the 953 gel coat defective?

8 A. In our opinion it is, yes.

9 Q. Is it necessary to replace all the 953  
10 gel coat on a boat?

11 A. No. We're not seeing failure in all  
12 areas. We believe there is certain environmental  
13 issues that will affect it on certain areas of the  
14 boat quicker or --

15 MR. WEISZ: At which we are not going to  
16 discuss in this deposition.

17 THE WITNESS: Yeah.

18 MR. WEISZ: That's subject of expert  
19 testimony that hasn't been disclosed yet.

20 BY MR. ZAJAC:

21 Q. Is there anything that can be done  
22 besides removal and replacing of the 953 gel coat to  
23 prevent it from failing?

24 MR. WEISZ: Hang on one second. If you  
25 ask the question in the sense of repairing the cracks,

1 BY MR. ZAJAC:

2 Q. At the time that -- strike that.

3 In July of 2005, were there any areas of  
4 Mr. Hamilton's boat that still needed to be stripped?

5 A. There were -- again, I believe there  
6 were a few cracks on the hull that we were going to  
7 address, and we were going to remove the bottom paint  
8 and inspect the bottom.

9 Q. Does Post warranty gel coat?

10 A. No.

11 Q. Does Post offer any type of warranty on  
12 its boats?

13 A. Yes.

14 Q. How long is that warranty?

15 A. At the time that Mr. Hamilton's boat was  
16 built, it was one year.

17 Q. Does Post's warranty extend to anyone  
18 beyond the original purchaser of the boat?

19 A. No.

20 Q. Is it Post's contention that if a boat  
21 is sold one year -- resold within one year that the  
22 warranty then expires?

23 A. Yes.

24 Q. Is it Post's contention that there is no  
25 warranty applicable to Mr. Hamilton's boat?



1           A.       Yes. Excuse me. Back up. From Post.  
2 Now, some component manufacturers have different  
3 warranties, which we don't address, but from Post, no  
4 warranty.

5           Q.       Before Post performed any repairs on Mr.  
6 Hamilton's boat, did Mr. Hamilton threaten to sue  
7 Post?

8           A.       Yes.

9           Q.       Is it Post's contention that Mr.  
10 Hamilton should have sued someone besides Post  
11 relative to the defective gel coat on his boat?

12          A.       That's his prerogative. That's -- it's  
13 not our decision.

14          Q.       Is it Post's position that there's some  
15 indispensable party to the action in the Massachusetts  
16 District Court?

17               MR. WEISZ: I'm going to object on the  
18 basis of his competency. That calls for a legal  
19 conclusion.

20 BY MR. ZAJAC:

21          Q.       Do you know who the original owner of  
22 Mr. Hamilton's boat was?

23          A.       Yes.

24          Q.       Who was it?

25          A.       Mr. Zappy (ph).

## (JENSEN - ZAJAC)

1 Q. Did anyone besides Mr. Zappy (ph) and  
2 L & T Yacht Sales, Incorporated own Number 76?

3 A. To my knowledge, no. Excuse me. With  
4 the exception of Portland Boat Works who was the  
5 stocking dealer. I don't believe that there was a Mr.  
6 Zappy (ph) to somebody else. I don't know the chain.

7 Q. Post has brought a claim against the  
8 manufacturer of the gel coat, correct?

9 A. Yes.

10 Q. And there's litigation pending in New  
11 Jersey Federal District Court concerning that matter?

12 A. Yes.

13 Q. And Viking Yacht is also a party to that  
14 case?

15 A. Yes.

16 Q. Is it Post's contention in the  
17 litigation in New Jersey that it has a warranty from  
18 manufacturer of the 953 gel coat?

19 MR. WEISZ: Object. Calls for a legal  
20 conclusion. If you care to review the pleadings,  
21 you'll see what the claims are.

22 MR. ZAJAC: I think he can answer that.  
23 I don't think that requires a conclusion -- a legal  
24 conclusion.

25 MR. WEISZ: Well --

## (JENSEN - ZAJAC)

1 MR. WEISZ: If you want to go off the  
2 record for a second.

3 MR. ZAJAC: Sure.

4 (Discussion off the record.)

5 BY MR. ZAJAC:

6 Q. Does Post contend that it had any  
7 implied warranty from the gel coat manufacturer?

8 A. I don't want to sound dumb, okay, but  
9 I'm not -- I don't want to say. I don't know.

10 Q. In its claim for damages -- strike that.  
11 What is the claim for damages that Post  
12 is making against the manufacturer of the gel coat?

13 A. We have -- we have -- we have the boats  
14 that we've repaired, the cost on those, and then we're  
15 also trying to cover all the boats that were  
16 manufactured with 953 gel coat.

17 Q. And how many boats were manufactured  
18 with 953 gel coat?

19 A. 81.

20 Q. How many have been repaired to date?

21 A. 81 have not had a problem, okay?

22 Q. Uh-huh.

23 A. Of those repaired, without counting, I'm  
24 goes to guess we're probably somewhere up between 15  
25 and 18. I'm guessing. It's ballpark.



1 three years ago with 953 gel coat.

2 Q. How many boats have been repaired once  
3 with 953 gel coat and have not required further  
4 repair?

5 A. Probably eight or nine.

6 Q. And how many have been repaired with 953  
7 gel coat and have required further repairs?

8 MR. WEISZ: I'm going to object to the  
9 form, but you can go ahead and answer it.

10 THE WITNESS: Okay. I know of two for  
11 sure. Three. Three for sure. Two have -- well, two  
12 are in process. One was done and there's maybe a  
13 couple of others.

14 BY MR. ZAJAC:

15 Q. Besides Mr. Brown's former boat, the  
16 50-footer, are there any other boats in which Post has  
17 obtained a release without performing any repairs or  
18 paying for a third-party to perform repairs?

19 A. No.

20 Q. Is there any litigation pending against  
21 Post from an owner besides Mr. Hamilton?

22 A. No.

23 Q. Have there previously been any  
24 litigation against Post from a -- by a former -- by an  
25 owner besides Mr. Hamilton?

## (JENSEN - ZAJAC)

1           A.       No. Post has been in business for 50  
2 years. Mr. Hamilton is the first person to sue Post  
3 in 50 years, and the lawsuit that Post is bringing  
4 against CCP is the first lawsuit that I'm aware of in  
5 50 years.

6                   Post has always been a company that has  
7 tried to accommodate customers, take care of their  
8 product and not get involved in these issues.

9           Q.       With regard to its claim against the gel  
10 coat manufacturer, has Post quantified its damages for  
11 the boats that have not yet been repaired, nor the gel  
12 coat has failed?

13           A.       We've put a number out there, which is  
14 an average of time.

15           Q.       What is that number?

16           A.       I'm trying to remember. I believe it  
17 was like 220, 225, 225,000, the boat. I think.

18           Q.       Is Post seeking damages above and beyond  
19 its cost of repair for boats that have already been  
20 repaired once using the 953 gel coat?

21           A.       We've notified them that those boats --  
22 what boats were repaired with 953 gel coat, and we  
23 notified them that those boats may crack again in the  
24 future based on what we've seen over the years, so  
25 they've been notified of that.

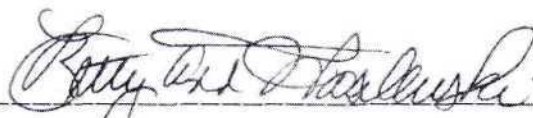
## (JENSEN - ZAJAC)

## C E R T I F I C A T I O N

I, BETTY ANN WASILEWSKI, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, KENNETH JENSEN was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.



BETTY ANN WASILEWSKI  
Certified Shorthand Reporter  
License No. XI01032  
Certificate of Merit  
Registered Professional Reporter  
My Commission expires 12/18/08

DATED: April 28, 2007.

THIS TRANSCRIPT FORMAT COMPLIES WITH NJ ADC 13:43-5.9.



# **EXHIBIT**

# **D**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION  
DOCKET NO. 05-11682

L & T YACHT SALES, INC., )  
Plaintiff )  
VS. )  
POST MARINE CO., INC., )  
Defendant )

**AFFIDAVIT OF TODD HAMILTON IN SUPPORT OF  
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT**

This 13<sup>th</sup> day of July 2007, Todd Hamilton, President of L&T Yacht Sales Inc., under oath deposes and states as follows:

1. I instructed my legal counsel, Lisa Kane Esquire, during August 2004 that unless Post swiftly agreed in writing to provide numerous needed repairs to my boat as specifically demanded by me, that I wanted her to file a law suit against Post within 30 days.
2. Upon receipt of August 25 letter from Post's legal counsel, I decided not to file against Post but rather decided to incur the expense of time and money to deliver my boat to Post in New Jersey and give Post an opportunity to fix the boat, seeking the clarification contained in the September 2, 2004 letter.
3. I fully expected that I would have my boat back, completely and properly repaired, within 4 to 5 months as Post stated in its letter to me.
4. After more than 9 months of having my boat, Post failed to fully or properly perform any of the 9 promises contained within the August 25 letter or the promises contained within the September 2, 2004 letter from Joe Martorana, particularly with regard to the complete stripping of the gel coat from entire surfaces.

Signed under pains and penalties of perjury this 13<sup>th</sup> day of July, 2007.

L & T Yacht Sales, Inc.

By: Todd Hamilton  
Todd Hamilton, President

# **EXHIBIT**

## **E**

ORIGINAL

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 BOSTON DIVISION

4 C.A. NO. 05-11682 MLW

5  
6 L & T YACHT SALES, INC., :

7 Plaintiff, :

8 -vs- :

9 POST MARINE CO., INC., :

10 Defendant. :

11 - - - - -

12  
13  
14 DEPOSITION OF: JOSEPH MARTORANA

15 WEDNESDAY, APRIL 11, 2007

16  
17  
18  
19 Atlantic City Court Reporting, LLC.

20 Certified Shorthand Reporters & Videographers

21 1125 Atlantic Avenue - Suite 416

22 Atlantic City, New Jersey 08401

23 (609) 345-8448

24 www.accourtreporting.com  
25



1 Deposition of JOSEPH MARTORANA, taken in the  
2 above-entitled matter before Betty Ann Wasilewski, a  
3 Certified Shorthand Reporter, License No. XI01032,  
4 Registered Professional Reporter, Certificate of Merit  
5 Holder and Notary Public of the State of New Jersey,  
6 taken at the offices of ATLANTIC CITY COURT REPORTING,  
7 LLC., 1125 Atlantic Avenue, Suite 416, Atlantic City,  
8 New Jersey 08401, on Wednesday, April 11, 2007,  
9 commencing at 2:14 p.m.

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1 A P P E A R A N C E S:

2  
3 CARMICHAEL & ZAJAC, P.C.

4 BY: JOHN E. ZAJAC, ESQ.

5 170 High Street

6 Taunton, Massachusetts 02780

7 (508) 821-2552

8 For the Plaintiff.

9  
10 SEGREDO & WEISZ

11 BY: MICHEL O. WEISZ, ESQ.

12 9350 South Dixie Highway

13 Suite 1500

14 Miami, Florida 33156

15 (305) 670-3820

16 For the Defendant.

17  
18 ALSO PRESENT:

19 Todd Hamilton  
20  
21  
22  
23  
24  
25

(MARTORANA - ZAJAC)

1                   J O S E P H       M A R T O R A N A,  
2   having been first duly sworn, testified as follows:

3                   EXAMINATION

4   BY MR. ZAJAC:

5           Q.       Good afternoon, Mr. Martorana.

6           A.       Good afternoon.

7           Q.       How are you? My name is John Zajac and  
8   I represent L & T Yacht Sales, Incorporated in  
9   litigation in the federal district court against Post  
10   Marine Company, Incorporated.

11                   Have you ever given a deposition before?

12          A.       Yes, I have.

13          Q.       I'm going to assume that you're  
14   relatively familiar with the ground rules, but I'm  
15   going to state them very briefly, which is that we're  
16   here to record your testimony, and I'm going to ask  
17   you questions, and you're going to answer them; that  
18   it's important that you answer verbally with yes or no  
19   if that's the appropriate answer and not uh-huh or  
20   uh-uh because that doesn't form a transcript or  
21   nodding your head or indicating something, other than  
22   verbally.

23                   If you don't understand my questions,  
24   please feel free to ask me to rephrase them or to  
25   explain anything so that you are clear in what I'm

(MARTORANA - ZAJAC)

1           A.       I thought it had better flexible  
2 properties to it, and it was better -- it was priced  
3 better. It was cheaper to be honest with you.

4           Q.       Had Post already been receiving  
5 complaints about boats with the 953 gel coat at that  
6 time?

7           A.       At what -- in 19 -- in 2002?

8           Q.       Yes.

9           A.       We had some boats, yes, but not -- yeah,  
10 we did have some boats. Yes, I believe.

11          Q.       Was it the complaints or was it the  
12 better performance characteristics of the  
13 Interplastic's at that time that made you select  
14 Interplastic's over the 953?

15          A.       It was my suspicion of the  
16 characteristics of 953 and the better pricing of the  
17 other gel coat and the better characteristics of the  
18 other gel coat.

19          Q.       Did you begin testing comparing the 953  
20 to Interplastic's before or after Post received its  
21 first complaint about cracking in the 953 gel coat?

22          A.       I'm not sure of that. At the time, and  
23 I'm talking about in 2000 -- the end of 2001, 2002, I  
24 don't believe there was any type of -- there was no  
25 wholesale cracking or problems that we had been aware



(MARTORANA - ZAJAC)

1 at that time, but I don't think we had any -- I don't  
2 think we had any -- any kind of conversations before  
3 that that I can remember.

4 Q. So did you have any involvement with  
5 regard to Mr. Hamilton's boat before it actually  
6 arrived at Post?

7 A. What -- what do you mean? I'm not sure  
8 I understand the question.

9 Q. Did you speak with Ken about it? Did  
10 you speak to --

11 A. Yes, I did.

12 Q. -- anyone about it?

13 A. Yes, I did.

14 Q. What did Ken tell you about it?

15 A. That it was a boat that we were going to  
16 repair, and we talked about, you know, when we could  
17 bring it in, and when we could get it done.

18 Q. And what did you discuss with Ken about  
19 a time frame for repairing Mr. Hamilton's boat?

20 A. I believe the boat -- we brought the  
21 boat in in November and we were going to work on it  
22 over the winter.

23 Q. Did you work on Mr. Hamilton's boat over  
24 the winter of 2004 into 2005?

25 A. Yes.

(MARTORANA - ZAJAC)

1 Q. What was the condition of the gel coat  
2 on Mr. Hamilton's boat when you first saw it?

3 A. The overall condition of the boat, I  
4 thought, was good. It looked like it was maintained.  
5 There were areas that were cracking, though. I saw  
6 the stress cracking.

7 Q. Okay. What areas did you first see  
8 cracking in Mr. Hamilton's boat when you took it in  
9 for repairs?

10 A. On the shelter sides, the front deck,  
11 the windshield, the cockpit floor, I believe the  
12 cockpit side decks.

13 Q. When did work on Mr. Hamilton's boat  
14 start?

15 A. In November.

16 Q. Was that right when it first came in?

17 A. Yes.

18 Q. Where at your facility was the work  
19 being performed?

20 A. In our production building.

21 Q. Were there other boats being repaired at  
22 the same time?

23 A. In the building?

24 Q. Yes.

25 A. No, I don't believe so.

(MARTORANA - ZAJAC)

1 A. Most of them, yes, I do recall.

2 Q. What were they?

3 A. The shelter sides, the windshield, the  
4 front deck, the cockpit, the cockpit side decks. I  
5 don't remember if the back bulkhead -- if we did work  
6 to the back bulkhead or not or the tackle lockers.

7 There was, I believe, one or two cracks  
8 on one side of the hull and on the other side, I  
9 believe, there was a couple small cracks around the  
10 vents.

11 Q. Did you have to strip the bottom of the  
12 boat?

13 A. Did we strip the bottom?

14 Q. Yes.

15 A. No, we didn't.

16 Q. Did you strip the sides of the hull?

17 A. Did I completely strip the sides? No, I  
18 did not.

19 Q. What of the hull was stripped?

20 A. The areas that were affected.

21 Q. How large were those areas?

22 A. On the side that we saw a couple cracks,  
23 they were running top to bottom, and there was  
24 probably two or three areas that we worked on there.

25 On the other side in the vent area, I

(MARTORANA - ZAJAC)

1 believe, there were small -- there were spots -- small  
2 spots around the radiuses of the vents.

3 Q. Did you have to strip the exterior of  
4 the bridge?

5 A. Exterior of the bridge? No. We didn't  
6 see any cracking on the exterior.

7 Q. Did you strip the inside of the bridge?

8 A. No, we didn't.

9 Q. Did you strip the floor of the bridge?

10 A. I'm not sure. They might have. I'm not  
11 sure.

12 Q. Did you strip the hardtop?

13 A. No, we did not. I don't believe we did.

14 Q. While the boat was at Post for repair,  
15 did Mr. Hamilton ever come and visit Post?

16 A. I believe he was, yes.

17 Q. Did he meet with you on any of those  
18 occasions?

19 A. I talked to him there, yes. He had been  
20 there.

21 Q. Do you recall how many separate  
22 occasions you met with Mr. Hamilton at Post during the  
23 repairs of the boat?

24 A. No, I don't recall how many. It might  
25 have been one or two.



(MARTORANA - ZAJAC)

1 Q. Do you recall when the first time was  
2 that you met with Mr. Hamilton at Post?

3 A. No, I don't.

4 Q. Do you recall any conversations that you  
5 had with him when you met with him?

6 A. I recall conversations about stripping  
7 the bottom, yeah, because we had talked about him  
8 sending us down some stripper, some solution to take  
9 the bottom paint off.

10 Q. And did he send that to you?

11 A. Yes, he did.

12 Q. What was the reason that he provided the  
13 stripper?

14 A. He had said he had a solution that would  
15 take the bottom paint off pretty readily.

16 Q. Did you use it?

17 A. We tried.

18 Q. Did it work?

19 A. No, it didn't.

20 Q. What was the problem with it?

21 A. I don't know. I don't think it works.  
22 We initially tried it with a pressure washer and it  
23 didn't work, and then I think Todd suggested that we  
24 had to use a hot water pressure washer or something  
25 that generated heat so we rented a machine that

(MARTORANA - ZAJAC)

1 coat on a boat?

2 A. Yes.

3 Q. What is it?

4 A. Different manufacturers different gel  
5 coats, it will vary, but around 20 mils is an average.

6 Q. And do you know how thick the gel coat  
7 on Mr. Hamilton's boat was?

8 A. No, I don't.

9 Q. What type of gel coat were you using for  
10 the repairs of Mr. Hamilton's boat?

11 A. We were using -- I believe we used  
12 Interplastic's on his house sides. Everything above  
13 the rub rail and on the hull side, I believe we used  
14 953.

15 Q. What would be the reason that you used  
16 the 953 on the hull side?

17 A. Because it blended very well.

18 Q. Because it was already 953 --

19 A. Yes.

20 Q. -- on the boat?

21 A. Uh-huh.

22 Q. Could you apply the Interplastic's gel  
23 coat over the 953 gel coat?

24 A. Yes.

25 Q. So there was some areas that didn't have

(MARTORANA - ZAJAC)

1 you needed the space in the production facility?

2 A. No. They're not related. The  
3 production facility is inside. The water has three  
4 slips out there or four slips out there.

5 Q. Did Post deliver a brand new 53-foot  
6 boat in July of 2005?

7 A. I don't know.

8 Q. Do you know what the total number of  
9 hours expended on the repair of Mr. Hamilton's boat  
10 was?

11 A. Yeah. I believe you asked me that  
12 before. It was somewhere around 2,200 hours. I don't  
13 know the exact number.

14 Q. And do you know the total cost of the  
15 repairs?

16 A. Personally, no.

17 Q. Was there some period of time that Post  
18 was used -- continuing to use 953 gel coat to repair  
19 the boats manufactured with 953 gel coat?

20 A. Yes, there was.

21 Q. When was that?

22 A. Exact time frame, I don't know. 2003  
23 possibly. 2002, 2003.

24 Q. And there was both 953 gel coat and  
25 Interplastic's gel coat used in the repairs of Mr.

(MARTORANA - ZAJAC)

1 Q. Is CCP's 953 gel coat defective?

2 A. I don't know that. I'm not a chemist.  
3 I believe -- I suspect something's wrong.

4 Q. And, generally, has it been boats kept  
5 in cold climates that have had this cracking problem?

6 A. Yes.

7 Q. Has it happened to any boat that's not  
8 kept in a cold climate yet?

9 A. I think there's one boat that I know of  
10 that, and I haven't seen it so I can't attest to if  
11 it's a normal gel coat crack, you know, because gel  
12 coat does crack after a certain amount of time, you  
13 know, it raises and all, or it's the type of cracking  
14 we've seen on some of the boats we've repaired.

15 Q. And is it fair to say that the cracking  
16 on Mr. Hamilton's boat is the typical kind of major  
17 cracking you've seen on boats with 953 gel coat kept  
18 in colder climates?

19 A. In some areas it was, yes.

20 Q. Which areas?

21 A. The areas that we repaired.

22 MR. ZAJAC: If we could take a short  
23 break, I'm probably done.

24 MR. WEISZ: Whatever you want.

25 MR. ZAJAC: I don't have too much



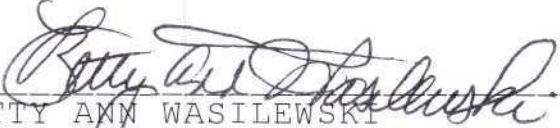
(MARTORANA - ZAJAC)

## C E R T I F I C A T I O N

I, BETTY ANN WASILEWSKI, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, JOSEPH MARTORANA was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

  
BETTY ANN WASILEWSKI  
Certified Shorthand Reporter  
License No. XI01032  
Certificate of Merit  
Registered Professional Reporter  
My Commission expires 12/18/08

DATED: April 29, 2007.

THIS TRANSCRIPT FORMAT COMPLIES WITH NJ ADC 13:43-5.9.

# **EXHIBIT**

# **F**

ORIGINAL

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 BOSTON DIVISION

4 C.A. NO. 05-11682 MLW

5  
6 L & T YACHT SALES, INC., :

7 Plaintiff, :

8 -vs- :

9 POST MARINE CO., INC., :

10 Defendant. :

11 - - - - -

12  
13  
14 DEPOSITION OF: CORTEZ MARKS

15 WEDNESDAY, APRIL 11, 2007

16  
17  
18  
19 Atlantic City Court Reporting, LLC.

20 Certified Shorthand Reporters & Videographers

21 1125 Atlantic Avenue - Suite 416

22 Atlantic City, New Jersey 08401

23 (609) 345-8448

24 www.accourtreporting.com  
25

1 Deposition of CORTEZ MARKS, taken in the  
2 above-entitled matter before Betty Ann Wasilewski, a  
3 Certified Shorthand Reporter, License No. XI01032,  
4 Registered Professional Reporter, Certificate of Merit  
5 Holder and Notary Public of the State of New Jersey,  
6 taken at the offices of ATLANTIC CITY COURT REPORTING,  
7 LLC., 1125 Atlantic Avenue, Suite 416, Atlantic City,  
8 New Jersey 08401, on Wednesday, April 11, 2007,  
9 commencing at 3:20 p.m.



1 A P P E A R A N C E S:

2  
3 CARMICHAEL & ZAJAC, P.C.

4 BY: JOHN E. ZAJAC, ESQ.

5 170 High Street

6 Taunton, Massachusetts 02780

7 (508) 821-2552

8 For the Plaintiff.

9  
10 SEGREDO & WEISZ

11 BY: MICHEL O. WEISZ, ESQ.

12 9350 South Dixie Highway

13 Suite 1500

14 Miami, Florida 33156

15 (305) 670-3820

16 For the Defendant.

17  
18 ALSO PRESENT:

19 Todd Hamilton

(MARKS - ZAJAC)

1 C O R T E Z M A R K S,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ZAJAC:

5 Q. Good afternoon, Mr. Marks.

6 A. Good afternoon.

7 Q. How are you?

8 A. Very well. Thank you.

9 Q. My name is John Zajac, and I represent  
10 L & T Yacht Sales, Incorporated in a lawsuit in the  
11 Federal District Court in Massachusetts against Post  
12 Marine Company.

13 We're here today to take your  
14 deposition. Have you ever given a deposition before?

15 A. Yes.

16 Q. Once or more than once?

17 A. Once.

18 Q. I'm going to assume that you probably  
19 know the ground rules, but I'll restate them briefly  
20 for you. I'm going to ask you questions and you're  
21 going to answer them. Someone is going to record  
22 your -- my questions and your testimony, and to  
23 prepare an accurate record of that, it's important  
24 that you answer questions verbally, not by nodding  
25 your head, not by saying uh-huh or uh-uh, because that

(MARKS - ZAJAC)

1 sides of the boat?

2 A. Yes. As I remember, there might have  
3 been either three or four cracks on the port side, and  
4 maybe a couple small ones on the starboard side.

5 Q. And were those repaired?

6 A. Yes.

7 Q. What was the process of repairs that  
8 were done to Mr. Hamilton's boat?

9 A. Well, that was ground out. The cracks  
10 were ground out and filled with a filler, and then it  
11 was sanded and sprayed and sanded out.

12 Q. Do you recall which gel coat Post used  
13 to repair Mr. Hamilton's boat, the 953 or  
14 Interplastic's or both?

15 A. I can't remember which one they used at  
16 this time.

17 Q. Was there a period of time that Post was  
18 using the 953 because the color blended well over --

19 A. Yes.

20 Q. -- 953?

21 A. Yes.

22 Q. And does Interplastic's blend less well  
23 from a coloring standpoint?

24 A. Well, the two -- the two may not look  
25 exactly the same if you patch with it. You'd have a

(MARKS - ZAJAC)

1 and he wasn't pleased.

2 Q. Did he have any specific complaints that  
3 you recall?

4 A. I can't remember.

5 Q. Do you remember anything that you said  
6 to him?

7 A. I can't remember.

8 Q. Besides using Interplastic's gel coat  
9 instead of 953 gel coat, has anything changed in the  
10 way that Post has been fixing cracked gel coat since  
11 the problem arose?

12 A. We tried to sand the gel coat off more  
13 aggressively than we did in the past.

14 Q. What do you mean by that?

15 A. Well, if there's an area where there's  
16 cracks, we try to sand it down as close to the  
17 laminate as we can.

18 Q. And how does that differ from the way  
19 you had previously been repairing it?

20 A. Well, previously, we tried to repair the  
21 cracks, and refinish it after we repaired the cracks.

22 Q. Which way was Mr. Hamilton's boat  
23 repaired, if you recall?

24 A. We filled the cracks and sprayed over  
25 the cracks.



(MARKS - ZAJAC)

1 Q. So it wasn't the aggressive sanding  
2 that's now being done?

3 A. No, no.

4 Q. Because of the repairs that Post has had  
5 to do, has it been required to purchase any equipment  
6 to do those repairs?

7 A. No, other than just the regular tools  
8 like sanders, or grinders, or whatever it may be.

9 Q. Can gel coat be applied over gel coat?

10 A. Yes.

11 Q. Is there any danger in applying new gel  
12 coat over potentially defective 953 gel coat?

13 A. That, I don't know.

14 Q. With regard to the hull of Mr.  
15 Hamilton's boat, was the hull stripped?

16 A. No.

17 Q. Was any of the gel coat stripped from  
18 the hull?

19 A. No.

20 Q. Was the bottom of the boat stripped?

21 A. No.

22 Q. Was any gel coat removed from the bottom  
23 of the boat?

24 A. No.

25 Q. Was the stern stripped?

(MARKS - ZAJAC)

- 1 A. I can't remember whether it was or not.
- 2 Q. Was the cockpit area stripped?
- 3 A. I believe the cockpit may have been
- 4 stripped.
- 5 Q. Was the freezer area stripped?
- 6 A. I'm not sure. I don't remember.
- 7 Q. Was the back bulkhead stripped?
- 8 A. I don't remember that.
- 9 Q. Was the front deck stripped?
- 10 A. Front deck was.
- 11 Q. Was the front of the salon stripped?
- 12 A. The front of the salon? What is the
- 13 front of the salon?
- 14 Q. Where the seat is in the front of the
- 15 boat.
- 16 A. The windshield was stripped. The front
- 17 seat, I recall that wasn't stripped at the time.
- 18 Q. Was the bridge stripped?
- 19 A. I -- I'm not sure. I don't think so.
- 20 Q. How about the bridge floor?
- 21 A. The bridge floor, yes.
- 22 Q. And the dashboard?
- 23 A. That wasn't stripped.
- 24 Q. And the hardtop?
- 25 A. I don't think that was stripped either.

# **EXHIBIT**

# **G**

Vol. 1 - 1

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11682MLW

L & T YACHT SALES, INC.,  
Plaintiff,

vs.

POST MARINE CO., INC.,  
Defendant.

DEPOSITION OF TODD J. HAMILTON, taken pursuant to Notice under the applicable provisions of the Federal Rules of Civil Procedure on behalf of the Defendant, before Simonne J. Elwood, R.P.R. and a Notary Public in and for the Commonwealth of Massachusetts, at the office of Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th Floor, Boston, Massachusetts, commencing on Tuesday, April 17, 2007 at 9:57 a.m.

NEAL A. SALLOWAY - COURT REPORTERS  
FIVE CARDIGAN ROAD  
WEST PEABODY, MA 01960  
781-581-3993 - 978-535-0313 - FAX 978-536-3142



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APPEARANCES:

JOHN E. ZAJAC, ESQ.  
CARMICHAEL & ZAJAC, P.C.  
170 HIGH STREET  
TAUNTON, MA 02780  
REPRESENTS THE PLAINTIFF

MICHEL OCIACOVSKI WEISZ, ESQ.  
SEGREGO & WEISZ  
9350 SOUTH DIXIE HIGHWAY - SUITE 1500  
MIAMI, FL 33156  
REPRESENTS THE DEFENDANT

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T. HAMILTON

1                                    S T I P U L A T I O N S

2                    It is hereby stipulated and agreed by  
3                    and between counsel for the respective  
4                    parties that all objections, except as to  
5                    form, are reserved until the time of trial,  
6                    including motions to strike.

7                    It is further stipulated and agreed  
8                    that the reading and signing of the  
9                    deposition are not waived and to be read and  
10                   signed under the pains and penalties of  
11                   perjury.

12                   It is further stipulated and agreed  
13                   that the filing and sealing of the deposition  
14                   are waived.

15  
16                                    TODD J. HAMILTON

17                    A witness called on behalf of the  
18                    Defendant, having been satisfactorily  
19                    identified by the production of his  
20                    Massachusetts driver's license 022609789 and  
21                    duly sworn, under oath, by the Court Reporter  
22                    and Notary Public, was examined and testified  
23                    as follows:

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T. HAMILTON

1                    DIRECT EXAMINATION

2            Q        (By Mr. Weisz) Good morning, Mr. Hamilton.  
3                    I'm going to assume that your lawyer has told  
4                    you what to expect at the deposition, so I  
5                    won't go through the ground rules; but if I  
6                    ask you something that you don't understand,  
7                    please let me know.

8            A        Okay.

9            Q        If you need a break, please let me know, and  
10                    we'll try to make this as, I guess, the least  
11                    uncomfortable as possible.

12                    I'm going to show you -- Well, before  
13                    we do that, let me ask you, please, to state  
14                    your full name.

15          A        Todd J. Hamilton.

16          Q        And, Mr. Hamilton, what's your relationship  
17                    to L & T Yacht Sales, Inc.?

18          A        President.

19          Q        How long have you been the President?

20          A        Since it was formed, I guess.

21          Q        Okay. Do you know when it was formed?

22          A        Not off the top of my head, I don't.

23          Q        Do you have an estimate?

Vol. 1 - 7

T. HAMILTON

1 A Sometime in '03. I don't know the exact  
2 month or date.

3 Q Okay. What was the purpose of forming L & T  
4 Yacht Sales?

5 A Just I was advised by attorneys and an  
6 accountant.

7 Q Was there a business purpose?

8 A No, just that's what they told me to do, so I  
9 listened to them.

10 Q What is the business of L & T Yacht Sales?

11 A Just L & T Yacht Sales.

12 Q What does the company do?

13 A Bought a boat, and it's holding a boat.

14 Q Is that the only asset?

15 A Yes.

16 Q Does L & T Yacht Sales file tax returns?

17 A Yeah.

18 Q Does it have any income?

19 A I'd have to ask the accountant that one. I  
20 don't even know. I don't handle any of the  
21 tax stuff to be honest with you; I don't; the  
22 accountant does.

23 Q Do you know who signs the tax return?



Vol. 1 - 16

T. HAMILTON

1 Q Okay. And then you took the boat away?

2 A Yeah. They put it in the water then, and  
3 then I left.

4 Q So does that lead you to conclude that the  
5 complaint was filed before you took the boat  
6 out of Post?

7 A I'd be lying. I don't know the answer  
8 whether it was or wasn't. I don't know.

9 Q Okay. All right. When you took the boat  
10 from Post, were there any areas of gel coat  
11 cracking that had not been fixed?

12 A Yes.

13 Q Which ones?

14 A The back deck, the stern, the port side, the  
15 bottom, the hard top, the freezer, the sink  
16 area in the back, the step area in the back,  
17 the gunnels in the back, the dashboard and  
18 the compass area and the bridge floor and the  
19 opposite side of the port which I'm drawing a  
20 blank for some reason, that side of the hull.

21 Q Okay. The back deck, is that on the top  
22 sides or on the hull?

23 A It's when you walk in the boat, you step

Vol. 1 - 26

T. HAMILTON

1           A       They wouldn't communicate with me when I  
2                    tried before I took the boat to get an answer  
3                    how we're going to fix the rest of it.

4           Q       Did they ever tell you that they would not  
5                    fix the items that you claimed were  
6                    outstanding?

7           A       Yes, they did.

8           Q       Who told you that?

9           A       Joe Martorana.

10          Q       When did he tell you that?

11          A       That was the week prior -- Let me think now.  
12                   That would be the week that I gave him the  
13                   letter of July 13th.

14          Q       So he told you that before you gave him the  
15                   letter?

16          A       Yes.

17          Q       What did he say?

18          A       That they would not be stripping the bottom;  
19                   they would not be stripping the hull; they  
20                   wouldn't be doing this; they wouldn't be  
21                   doing that.

22          Q       So they wouldn't fix the boat the way you  
23                   wanted it, is that right?

Vol. 1 - 27

T. HAMILTON

1 A No, not the way I wanted, the way they said  
2 they were going to.

3 Q How did they say they were going to fix it?

4 A They said they were going to strip the hull  
5 and the cracked areas.

6 Q Okay. Were they going to strip the entire  
7 hull or the areas where there were cracks?

8 A They said they were going to strip the hull,  
9 deck, sides, the bottom.

10 Q Was there ever anything in writing that  
11 indicated what Post was going to do?

12 A Yes.

13 Q Okay. What was there in writing?

14 A A letter from Joe Martorana to me.

15 Q Anything else?

16 A About the work they were going to do?

17 Q Yes.

18 A No, not about -- The only thing in writing  
19 from them about work was the one letter, I  
20 believe, except for the letter from you, of  
21 course.

22 Q Okay. Do you think the letter from me  
23 counts?

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T. HAMILTON

1                   (Whereupon the Stenographer marked as  
2                   Exhibit No. 5 - Fax - To Mr. Hamilton from  
3                   Joseph Martorana.)  
4           Q       Do you recognize that letter? (Indicating)  
5           A       Yes, I do.  
6           Q       Do you know when that letter was sent?  
7           A       I do. I don't have it in front of me because  
8                   it's on the top.  
9           Q       Okay.  
10          A       But it's not -- You can't see it here, but  
11                   the original you can see the date and time it  
12                   was faxed. I believe it was in either  
13                   September or October of 2004.  
14          Q       Do you know whether that letter was sent  
15                   before you brought the boat to Post for  
16                   repairs?  
17          A       Yes, it was.  
18          Q       Okay. And when did you bring the boat to  
19                   Post for repairs?  
20          A       I believe it was the end of October or  
21                   November 1st, somewhere in there.  
22          Q       Did you ever pay Post anything to repair the  
23                   boat?



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T. HAMILTON

1 A Nope.

2 Q Do you know what the value of the work was  
3 that Post performed on the boat?

4 A The value that Post did?

5 Q Yes.

6 A Zero.

7 Q Okay. And why do you say that?

8 A Because they sprayed gel coat over gel coat  
9 that's re-cracking so now it's double the work  
10 to take it off.

11 Q How do you know that's what they did?

12 A When you're sanding it off, you could see  
13 three layers; it was so thick.

14 Q And --

15 A Three different colors.

16 Q Okay. Is this something that you have  
17 observed yourself?

18 A Yes.

19 Q And how do you know it's three layers of gel  
20 coat?

21 A Three different colors.

22 Q What does that mean; why does that mean three  
23 different --

Vol. 1 - 39

T. HAMILTON

1 A They told me that in March.

2 Q Okay. And how did they tell you that, over  
3 the phone or in person?

4 A Over the phone. I kept calling for a  
5 progress report through the winter.

6 Q It would always be Joe or Ken is the only two  
7 people I'd speak to.

8 A All right.

9 Q Let's just see what you say here.

10 A Okay.

11 Q "As a follow up to our conversation on June  
12 14, 2005 at Post Marine in New Jersey, --."

13 So that was an in-person conversation?

14 A Yes, it was.

15 Q Okay. And you were at the boat?

16 A I went and reviewed the boat. I remember  
17 when they had the boat. It was outside.  
18 They had one side covered. They were doing  
19 something on the back.

20 Q Okay. "-- and our subsequent phone  
21 conversation on June 15, 2005, the following  
22 are the items we have agreed that I need you  
23 to repair prior to me picking up the boat

Vol. 1 - 45

T. HAMILTON

1 A Correct.

2 Q Okay. And 14 is blank.

3 A Yes.

4 Q Okay. And that was your entire list of items  
5 that needed to be done before the boat was  
6 picked up, is that correct?

7 A For what I could see. The boat was half  
8 covered when I got there.

9 Q Okay. Did you ask them to remove the cover?

10 A They couldn't. They had guys sanding. They  
11 had the thing all mast off. So I kept poking  
12 my head where I could put it.

13 Q Okay. Did you go back and look at the boat  
14 again when they took it off?

15 A When I came back in July, yes. When it was  
16 uncovered when I got there and it was a  
17 cloudy day, yes, I did.

18 Q Okay.

19 A You can't look at the boat in direct sunlight  
20 because it's too blinding.

21 Q Okay. So you can see the cracks better on a  
22 cloudy day?

23 A Oh, absolutely.

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1 on a boat that he cannot use. What do you  
2 mean you cannot use?

3 A Well, for nine months, I couldn't use it  
4 because Post had it, and then it came back  
5 here and sat for another ten months being  
6 stripped and worked on. That's two years.

7 Q Why was it taking ten months to strip and  
8 work on it after you took it from Post?

9 A Because they sprayed right over the old gel  
10 coat, so I had to redo their work; twice the  
11 work.

12 Q Is the boat completely fixed now?

13 A Nope.

14 Q What still needs to be done?

15 A The sides of the hull, the front deck, the  
16 bridge, the hard top, the front of the  
17 windshield and where it says, "Post," it all  
18 has to be stripped. It's all cracking.  
19 Everything they've touched and sprayed is  
20 cracked.

21 Q Why hasn't that been fixed yet?

22 A Because it took us six and-a-half months to  
23 strip that one section correctly and do it



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C E R T I F I C A T E

I, Simonne J. Elwood, R.P.R. and a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 17th day of April 2007, personally appeared before me Todd J. Hamilton, at the office of Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th Floor, Boston, Massachusetts, in the aforecaptioned cause pending in the United States District Court for the District of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to computer transcription under my supervision. I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto  
subscribed my hand and affixed my seal of office  
this 30th day of April, 2007.

  
\_\_\_\_\_  
Simonne J. Elwood  
REGISTERED PROFESSIONAL REPORTER

My Commission Expires: February 14, 2008

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION  
DOCKET NO. 05-11682

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L & T YACHT SALES, INC. )  
PLAINTIFF, )  
VS. )  
POST MARINE, INC. )  
DEFENDANT )

---

Document Electronically Filed

**CERTIFICATION OF JOHN E. ZAJAC**

I, John E. Zajac, of full age, hereby certify:

I am an attorney-at-law of the State of Massachusetts with the law firm of Carmichael, Zajac & Fleury, P.C. attorney for the Plaintiff, L & T Yacht Sales, Inc. I am fully familiar with the matters set forth herein. I make this Certification in support of PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANT'S STATEMENT OF MATERIAL FACTS, which is being filed contemporaneously herewith.

Respectfully submitted,  
The Plaintiff,  
By its Attorneys,

/s/ John E. Zajac  
John E. Zajac, Esquire BBO # 560195  
CARMICHAEL, ZAJAC & FLEURY, P.C.  
170 High Street  
Taunton, MA 02780  
(508) 821-2552

**CERTIFICATE OF SERVICE**

I, John E. Zajac, Esquire this 13th day of July, 2007 have given notice of the within, Plaintiff's Response Memorandum in Opposition to Defendant's Motion for Summary Judgment by e-mail service, via the Court's CM/ECF system which sent notification of such filing to Howard M. Brown, Esquire, Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th floor, Boston, MA 02110 and by regular mail, postage pre-paid to Michel O. Weisz, Esquire at 9350 S. Dixie Highway, Miami, FL 33156.

/s/ John E. Zajac  
John E. Zajac, Esquire

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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L & T YACHT SALES, INC.        )  
                                  PLAINTIFF,        )  
  )  
VS.                                        )  
  )  
POST MARINE, INC.                )  
                                  DEFENDANT        )

---

Document Electronically Filed

**CERTIFICATION OF JOHN E. ZAJAC**

I, John E. Zajac, of full age, hereby certify:

I am an attorney-at-law of the State of Massachusetts with the law firm of Carmichael, Zajac & Fleury, P.C., attorney for the Plaintiff, L & T Yacht Sales, Inc. I am fully familiar with the matters set forth herein. I make this Certification in support of PLAINTIFF'S RESPONSE AND OPPOSITION TO DEFENDANT'S STATEMENT OF MATERIAL FACTS, which is being filed contemporaneously herewith.

1. Attached hereto as Exhibit A is a true and accurate copy of Post Marine Co., Inc.'s Answers to Interrogatories 20-22, filed as an exhibit and obtained as a public record from the New Jersey District Court PACER website in Civil Action No. 05-538.
2. Attached hereto as Exhibit B is a true and accurate copy of Post Marine Co., Inc.'s Amended Complaint filed and obtained as a public record from the New Jersey District Court PACER website in Civil Action No. 05-538.
3. Attached hereto as Exhibit C is a true and accurate copy of excerpts from the deposition transcript of Kenneth Jensen of Post Marine Co., Inc.
4. Attached hereto as Exhibit D is a true and accurate copy of an affidavit signed by Todd Hamilton of L & T Yacht Sales, Inc., the original of which is at my office.
5. Attached hereto as Exhibit E is a true and accurate copy of excerpts from the deposition transcript of Joe Martorana of Post Marine Co., Inc.
6. Attached hereto as Exhibit F is a true and accurate copy of excerpts from the deposition transcript of Cortez Marks of Post Marine Co., Inc.
7. Attached hereto as Exhibit G is a true and accurate copy of excerpts from the deposition transcript of Todd Hamilton, President of L & T Yacht Sales, Inc.

Respectfully submitted,  
The Plaintiff,  
By its Attorneys,

/s/ John E. Zajac

John E. Zajac, Esquire BBO # 560195  
CARMICHAEL, ZAJAC & FLEURY, P.C.  
170 High Street  
Taunton, MA 02780  
(508) 821-2552

Dated this 13<sup>th</sup> day of July, 2007.